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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,196	01/22/2001	Ronald J. Lebel	047711-0221	1919

90319 7590 06/08/2011

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EXAMINER	
DESANTO, MATTHEW F	
ART UNIT	PAPER NUMBER
3763	

MAIL DATE	DELIVERY MODE
06/08/2011	PAPER

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RECORD OF ORAL HEARING

U. S. PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD J. LEBEL, VARAZ SHAHMIRIAN, DANIEL H. VILLEGAS, DAVID Y. CHOY, PHILIP T. WEISS, and PAUL M. MEADOWS

Appeal 2009-010118
Application 09/768,196
Technology Center 3700

Oral Hearing Held: March 8, 2011

Before WILLIAM F. PATE, III, STEFAN STAICOVICI , and FRED A. SILVERBERG, *Administrative Patent Judges.*

APPEARANCES:

ON BEHALF OF THE APPELLANT:

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The above-entitled matter came on for hearing on Tuesday, March 8, 2011, commencing at 9:00 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Victor Lindsay, a Notary Public.

PROCEEDINGS

MR. RITTMASTEMR: Good morning.

JUDGE PATE: We're coming to you from the electronic hearing room at the Patent and Trademark Office, and this is the hearing for 2009-10118. It's our docket number 5. And who am I speaking to, please?

MR. RITTMASTER: I am Ted Rittmaster. I'm with the law firm of Foley and Lardner and I am representing Medtronic-MiniMed.

JUDGE PATE: Okay. Could you spell your last name for the court reporter, please?

MR. RITTMASTER: Yes. Last name is Rittmaster, R-I-T-T-M-A-S-T-E-R.

JUDGE PATE: Okay. Let me introduce the panel here. We've got Judge Silverberg, he's sitting on my left, and Judge Staicovici is sitting on my right, and I'm Judge Pate; I'll be presiding. And you have 20 minutes for argument and you may begin now.

MR. RITTMASTER: Thank you very much. As I mentioned, I represent Medtronic-MiniMed. Medtronic Corporation is a leading manufacture of medical products and Medtronic-MiniMed focuses on medical products for treating and management of diabetes.

Embodiments of the invention that we're dealing with today relate to a medical system that has two basic components. It has a portable medical device and a communication device. Now, in one example context in the application, this is our Figures 1A and B, the portable medical device may

be an infusion pump designed to pump a treatment medium, like insulin, into a patient, and a portable medical device may be implanted in the patient or it may be something that's carried by the patient on a belt or in a pocket. The communication device part of the system is a separate device that communicates with the medical device and this can be a hand-held device. An example of one is shown in our Figure 2. It is a computerized communication device that communicates information or instructions to the medical device and it receives information from the medical device. It has a display that can show a number of patient-programmable options on one or more menus, we'll call these first menus, and at least one of these programmable options may be enabled and disabled by the user from a second menu. When it's disabled, the option is no longer shown on the first menu. I'm going to come back to this a little bit, but I just wanted to point that out initially because that's an important feature of how the claims are set out.

And why is this important? As the popularity and use of medical devices increases, medical devices are being developed for a larger population, a larger group of the population. To address the needs of a larger population group, devices are being provided with a variety of different options and functions. Some of these are programmable to meet particular needs. Some of these options might be options for sensing or monitoring different conditions or activities of the patient. In the context of diabetes management, this might be monitoring food intake, sleep time. Other options may be providing different types of treatment to a patient. Again, in the context of diabetes management, this might be pumping of insulin in bolus amounts, these are discrete types amounts at different times,

or basal amounts, which is a continuous -- could be discrete amounts over a continuous period of time or a continuous flow and how these are controlled. All of these can be programmable.

A given patient device can have many different functions that are useful that are provided in the device so that the device can be useful for a large group of the population. For a particular patient, not all of those options or functions are necessary and sometimes it's desirable to disable options so that that patient doesn't possibly accidently use that option or change a parameter. What Medtronic has realized is that when you have a device that's made for the general population with a lot of different options that are programmable by the user or by the medical technician where you might want to disable some of these options, it could be difficult to scroll through and find the correct options, the options that you want, if you have too many disabled options on your menus. So, what Medtronic inventors have developed is a menu system where you have a first menu that would show patient controllable options, a second menu that allows you to disable or enable certain ones of those options on the first menu, but also when those options are disabled on the first menu, they are no longer displayed on the first menu. The patient no longer, or the medical technician now, no longer has to scroll through a number of disabled and unused options to find the right option or the option that they want to adjust or look at.

Now, independent claim 12 of the present application, that's our main independent, first independent claim, I should say, it includes a phrase in there that's relevant to what I've been talking about and if I could just, I hate to do this, but I'm reading a phrase right out of the claim, but I think it's important to understand the language of it. It says that the CD display is

controlled to depict a plurality of patient programmable options on at least one first menu and where at least one of the patient programmable options may be enabled and disabled at different times from a second menu, such that when disabled that at least one programmable option is no longer displayed on the first menu as an option, while at least one other enabled option is still displayed on that first menu. So, that feature that I was talking about is recited right in claim 12. What we've been trying to point out through the prosecution is that none of the patent references of record teach or suggest a medical device that has those features, and similar comments would apply to claim 29, but where rather than menus it talks about first and second display screens, but otherwise, it's very similar language.

The Examiner raises rejections based on combinations of patent references and those are the Tune et al. reference, Goedeke, Moon, Causey, and there's another reference, Er, that was used in rejecting claim 12 in combination. But, none of those references teach a display that depicts a patient programmable option on a first menu where at least one of those options is enabled and disabled from a second menu and when that option is disabled, it's no longer shown on the first menu.

An example, Tune, which was one of the primary references cited against us, describes a control panel, a display screen that has display screens as shown in Tune's Figures 27, 28 and 29, and one of the display screens, 27, can be used to select a delivery mode, like a continuous flow or a discontinuous flow of a medical drug, like insulin for example. Once the delivery mode is selected from that Figure 27 screen, the parameters for that delivery mode are then displayed on another screen and that's what's shown in Figure 28, and the status of that selected drip delivery mode are shown on

the screen 29, but none of those screens operate to allow you to enable and disable a patient selectable option on one screen, where when you disable it, it no longer is shown on that screen while other enabled options are.

Causey is another primary reference cited in one of the rejections and again, this reference while it discloses programmable options, a medical device that can be programmed to perform various functions and have certain options, as we see it, there's no disclosure of a first menu that has patient programmable options and a second menu that is used to enable and disable those options where they're no longer then displayed on the first menu when disabled.

The Moon reference was recently cited. This reference, while it shows a meter display area that has a rotating or sequencing meter and another display area that allows you to add meters to that meter display area. The meter display area is not a menu of, again, patient programmable options. It's just simply a display of meters and those meters also are not enabled and disabled when they're not shown on the display. They're still monitoring, they just may not be shown on the display.

In summary then, what I've tried to point out is that the features that we recited in claim 12 relating to the patient-programmable options on the first menu being enabled or disabled from the second menu and no longer shown on the first menu, it provides some significant advantages in the context of making a medical device very easy to operate and that can make or break the -- or make the system either usable or not usable in the context of the general population.

I'm sorry if I went over my 20 minutes but I haven't been watching real closely on the time, but if you have any questions, I'd be happy --

JUDGE PATE: No. You're good with respect to time.

Do you have any questions, Judge Silverberg?

Any questions, Judge Staicovici?

JUDGE STAICOVICI: Yes, I have a question in regard to claim 12. Can you hear me?

MR. RITTMASTER: Yes. Yes, I can.

JUDGE STAICOVICI: The status of being disabled or enabled seems to be only related to displaying something on the screen, on the monitor. It has nothing to do with the working of the application itself. Isn't that what Moon does? It merely displays the icon of status of the battery or it does not display it.

MR. RITTMASTER: He does display or not display. I agree with that. What he is displaying is a meter. It's not a patient programmable option on a menu.

JUDGE STAICOVICI: But, isn't that the combination of the Examiner? The combination of the two references would eventually display a menu of programmable options for a medical device.

MR. RITTMASTER: Again, I don't think that any of the references, even in combination, would show that you can use one menu to enable or disable an option on another menu. While one might show menus, and using menus to select options, they run into that issue of if you do select to not use an option, that option is still on that menu and where Moon describes adding or removing meters from a meter display, again, that is not a teaching of removing an option from a menu, a patient selectable option from a menu. Having menus -- The two of them in combination, do not address the issue of having menus that are overcrowded with unused or disabled options.

JUDGE PATE: Any other questions, Judge Staicovici?

JUDGE STAICOVICI: No.

JUDGE PATE: We have no more questions for you, so we're going to take this case under advisement and this video hearing is concluded. Thank you very much.

MR. RITTMASTER: Thank you very much.

(Whereupon, the proceedings, at 9:15 a.m., were concluded.)